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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

KRISTIN STRAWBUCK, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

EQUITY LIFESTYLE PROPERTIES, INC., a
Maryland corporation, et al.,

Defendants.

Case No.: 22CV398628

*[Assigned for all purposes to the Hon. Theodore
C. Zayner]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: July 30, 2025
Time: 1:30 p.m.
Courtroom: Dept. 19
Judge: Hon. Theodore C. Zayner

RESERVATION CODE: **GVTZRCNH**

Action Filed: May 26, 2022
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 30, 2025, at 1:30 p.m., or as soon thereafter as the matter
3 may be heard, in Department 19 of the above-captioned Court, located at 161 North First Street, San
4 Jose, CA 95113, Plaintiff Kristin Strawbuck ("Plaintiff") will and hereby does move this Court for an
5 order approving the STIPULATION OF SETTLEMENT UNDER THE LABOR CODE PRIVATE
6 ATTORNEYS GENERAL ACT ("Agreement") reached with Equity LifeStyle Properties, Inc. ("ELS")
7 and MHC Property Management, L.P., ("MHC") (collectively, "Defendants"), a true and correct copy of
8 which is attached as **Exhibit 1** to the Declaration of H. Scott Leviant submitted herewith.

9 Specifically, Plaintiff moves for an order to:

10 1. Grant approval of the terms of the Agreement pursuant to the Labor Code Private
11 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
12 settlement; the amount of distributions to the State and the alleged aggrieved employees (referred
13 to in the Agreement as "PAGA Settlement Members"); the amounts allocated to attorney's fees
14 and costs; and, the amount allocated to the settlement administrator; and,

15 2. Direct disbursement of the Settlement Amount pursuant to the terms of the Agreement.

16 **TENTATIVE RULINGS:** Tentative rulings issued by Department 19 will be accessible on
17 the Department's tentative rulings page after 2:00 p.m. on the court day preceding the scheduled
18 hearing. To access the online tentative rulings, visit the following web page:
19 <https://santaclara.courts.ca.gov/system/files/tentative-ruling/dept-19-wed.pdf>. (Note: rulings will
20 remain accessible until replaced by successive rulings.) If you do not have access to the Internet during
21 the time period when the rulings are posted and you wish to obtain your tentative ruling, please call
22 (408) 882-2515 for assistance. The prevailing party shall prepare a formal order by copying the text
23 from the posted tentative ruling and paste it into a pleading template. Pursuant to the Rules of Court,
24 the proposed order must be sent to all counsel for review before sending it to the Court for execution
25 and filing. Tentative rulings will become Orders of the Court unless contested. See Rules 3.1308(a)(1)
26 and 3.1312, California Rules of Court.

27 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
28 Declarations of H. Scott Leviant and Phoenix Settlement Administration, submitted herewith, all other

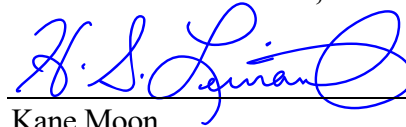
1 pleadings and papers on file in this action, and any oral argument or other matter that may be
2 considered by the Court.

3 Respectfully submitted,

4 Dated: February 21, 2025

MOON LAW GROUP, PC

5
6 By:



Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. SUMMARY OF THE TERMS OF SETTLEMENT	2
III. STATEMENT OF FACTS.....	3
IV. PROCEDURAL HISTORY	4
V. SETTLEMENT NEGOTIATIONS.....	5
DISCUSSION	5
VI. THE QUI TAM NATURE OF PAGA CLAIMS	5
VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT.....	6
VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL	7
A. The PAGA Penalty Amount Provides Genuine and Meaningful Relief to the LWDA and PAGA Settlement Members Consistent with the Dual-Purpose of PAGA.....	9
B. The PAGA Penalty Amount Is Reasonable Pursuant to Labor Code § 2699(e).....	9
1. The Total Amount of the Settlement is \$295,000.00	12
2. Payment of At Least \$165,521.10 in Penalties	13
a) The LWDA shall receive at least \$124,140.82	13
b) PAGA Settlement Members shall receive a pro rata share of at least \$41,380.27.....	13
C. The Presence of a Government Participant.....	13
D. PAGA Counsel Are Experienced and Negotiated Aggressively	13
E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs	14
1. Fees and Costs.....	14
2. Administration Fees Are Very Reasonable.....	15

IX. CONCLUSION	15
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TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>Arias v. Superior Court</i> , 46 Cal. 4th 969 (2009).....	3, 5, 6, 7
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	7, 15
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> , 59 Cal. 4th 348 (2014) <i>certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian</i> , — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015).....	6
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001).....	15
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	15
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	6
<i>Osumi v. Sutton</i> , 151 Cal. App. 4th 1355 (2007)	7
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	7
<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	5

FEDERAL DECISIONAL AUTHORITY

<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	14
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. 1373 (N.D. Cal. 1989).....	14
<i>In re Corrugated Container Antitrust Litigation</i> , 643 F.2d 195 (5th Cir. 1981)	7
<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998).....	12
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	1, 6

STATUTES

Labor Code § 2699(e)	10
Labor Code § 2699(e)(2)	13
Labor Code § 2699(f)(2).....	10
Labor Code § 2699(l)(2).....	1

Labor Code § 2699.3(b)(4)	1
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TREATISES

7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261	14
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Kristin Strawbuck (“Plaintiff”) moves the Court for approval of the STIPULATION OF SETTLEMENT UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“Agreement”) between Plaintiff and Defendants Equity LifeStyle Properties, Inc. (“ELS”) and MHC Property Management, L.P., (“MHC”) (collectively, “Defendants”) (together with Plaintiff, the “Parties”).¹ The Agreement resolves the Private Attorneys General Act (“PAGA”) claims alleged in this Action on behalf of Plaintiff, all allegedly aggrieved employees, and the State of California.

The PAGA claims are alleged pursuant to PAGA, which states: “[T]he...court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The California Supreme Court has interpreted this provision to ensure “any negotiated resolution [of a PAGA claim] is fair to those affected.” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The California Supreme Court has not defined a standard by which trial courts are to review and approve proposed PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA settlement provides “genuine and meaningful [relief] consistent with the underlying purpose of the statute” and is reasonable in light of the potential verdict value of all claims released. *See O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(l)(2).

After exchanging documents and data prior to mediation, Plaintiff and Defendants reached a proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”) for approximately 965 aggrieved employees (“PAGA Settlement Members”). Under the Agreement, Defendants shall pay a maximum sum of **\$295,000.00**, referred to as the “Settlement Amount,” for PAGA Settlement Members employed in California during the designated PAGA period.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

For the reasons below, Plaintiff requests that the Court enter an order approving the terms of

¹ The STIPULATION OF SETTLEMENT UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT is referred to therein as the “Settlement Agreement.” For brevity, it is simply referred to as the “Agreement” in this Motion.

1 settlement.

2 **II. SUMMARY OF THE TERMS OF SETTLEMENT**

3 The full terms of the settlement are in the Agreement. A summary of the terms of the Agreement
4 is as follows:

- 5 (a) PAGA Settlement Members (the alleged aggrieved employees, as defined in the
6 Agreement): all current and former non-exempt employees of MHC who worked
7 in California during the PAGA Period (the period May 30, 2021 through the date
8 on which the Court enters an Order of Approval). For purposes of the
9 Agreement, “non-exempt hourly employees” includes employees and direct hires
10 of MHC, including seasonal employees. (Agreement, ¶¶ II.A.14, II.A.15).
- 11 (b) No Reversion: The Settlement is *non-reversionary*, since the full Net Settlement
12 Amount will be allocated to PAGA penalty payments. (Agreement, ¶¶ II.A.10,
13 II.A.21.)
- 14 (c) Settlement Amount: Defendants agree to pay the maximum sum of **\$295,000.00**
15 (hereinafter referred to as the “Settlement Amount”) for settlement of the Release
16 Claims, which shall be inclusive of Administrative Costs, Attorneys’ Fees and
17 Costs, and PAGA payment to the LWDA. (Agreement, ¶ II.A.21.)
- 18 (d) PAGA penalties (referred to herein as the “PAGA Penalty Amount”): At least
19 **\$165,521.10** will be available for distribution to the PAGA Settlement Members
20 and the LWDA. Of this amount, the LWDA will receive at least **\$124,140.82**
21 under the Agreement, and PAGA Settlement Members will receive at least
22 **\$41,380.27**. (Agreement, ¶¶ II.A.10, II.A.21, II.C)
- 23 (e) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees in the
24 amount of **\$98,333.33**, which is one-third of the Settlement Amount.
25 (Agreement, ¶¶ II.A.2, II.C; Leviant Decl., ¶ 39, and Exh. 2.)
- 26 (f) Litigation Costs: Plaintiff’s Counsel seeks reimbursement of actual litigation
27 costs, to a maximum amount of \$26,000.00. The actual costs are \$24,145.57,
28 which includes a reasonable estimate of the costs of filing the motion. Therefore,

\$24,145.57 is requested. (Agreement, ¶¶ II.A.2, II.C.2; Leviant Decl., ¶ 40, and Exh. 2.)

- (g) Settlement Administration: Payment to PAGA Settlement Members and administration will be accomplished through third-party settlement administrator, Phoenix Settlement Administration, which has agreed to perform Administrator duties for a flat fee not to exceed \$7,000.00, which is reasonable, based on all of the services offered. (Agreement, ¶¶ II.A.1, II.C.3; Leviant Decl., ¶ 41; Declaration of Jodey Lawrence [Decl. of Lawrence], ¶ 16.)
- (h) Uncashed Checks: Uncashed checks sent to the PAGA Settlement Members will be void after 180 days of issuance, and the funds will, pursuant to Unclaimed Property laws, be directed to the California State Controller's Office in the name of the PAGA Settlement Members who did not cash the check. (Agreement, ¶ II.C.3.c.)²
- (i) Release: In exchange for the above settlement consideration, Defendants, and the "Released Parties," as defined in the Agreement, shall be entitled to a *limited* release from any and all PAGA-based claims for civil penalties that arise out of or are related to the PAGA claims set forth in the PAGA Notice.³ (Agreement, ¶ II.C.5; Leviant Decl. ¶ 24, Exh. 1.)
- (j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45, Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff, a former employee of MHC, commenced this Lawsuit against ELS in the Superior

² If the Court requires that the Parties utilize a *cy pres* entity for uncashed checks, the Parties agree to the State Bar's Justice Gap Fund as the *cy pres* entity for uncashed checks.

³ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 Court of California for the County of Santa Clara, asserting individual and alleged class action violations
2 of various provisions of the Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations also
3 subject Defendants to potential liability under California’s Labor Code Private Attorneys’ General Act
4 (“PAGA”) for civil penalties pursuant to Labor Code § 2698, *et seq.* (*Id.*) Through this action, Plaintiff
5 seeks to recover civil penalties pursuant to Labor Code § 2698, *et. seq.* (*Id.*)

6 ELS is an operator of Manufactured Home Communities, RV Resorts and Campgrounds in
7 North America. ELS operates home communities and RV resorts and campgrounds across the country.
8 (Leviant Decl., at ¶ 5.) Plaintiff worked for MHC, a subsidiary of ELS, in California during the PAGA
9 Period. (*Id.* at ¶ 6.) Defendants contend they had lawful policies, including break and pay policies, in
10 effect throughout the statutory period, and viable defenses to the alleged penalty claims. (*Id.* at ¶ 7.)

11 **IV. PROCEDURAL HISTORY**

12 On May 21, 2022, Plaintiff’s Counsel sent a letter to the California Labor and Workforce
13 Development Agency (“LWDA”) on behalf of Plaintiff in compliance with Labor Code § 2699.3.
14 (Leviant Decl., ¶ 8.) On November 6, 2024, Plaintiff’s Counsel sent an amended letter to the LWDA on
15 behalf of Plaintiff in compliance with Labor Code § 2699.3. (*Id.*) More than 65 days passed after each
16 letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged
17 violations referenced in either letter. (*Id.* at ¶ 9.) Plaintiff commenced this Lawsuit against ELS in the
18 Superior Court of California for the County of Santa Clara on May 26, 2022, asserting causes of action
19 based on an alleged failure to (1) pay minimum wages; (2) pay overtime wages; (3) provide meal
20 periods; (4) authorize and permit rest periods; (5) maintain accurate records of hours worked and meal
21 periods; (6) timely pay all wages at termination; (7) reimburse business expense reimbursements; and (8)
22 furnish accurate itemized wage statements. Plaintiff also asserted a cause of action for unfair business
23 practices under California’s Business and Professions Code. (*Id.* at ¶ 10.) On August 3, 2022, Plaintiff
24 filed a First Amended Complaint to include a cause of action for civil penalties under PAGA. (*Id.*)

25 On July 28, 2023, the Court granted Plaintiff’s request to dismiss the Class claims without
26 prejudice, based upon the existence of an arbitration agreement. (*Id.*) On January 8, 2025, Plaintiff filed
27 a Second Amended Complaint to add MHC as a named defendant and to include allegations noticed in
28 Plaintiff’s amended PAGA Notice to the LWDA. (*Id.*) The Second Amended Complaint is the

operative complaint in the Action (the “Operative Complaint.”). (*Id.*) The Parties agreed to settle the matter as a PAGA action. (*Id.*) Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for civil penalties under PAGA. (*Id.* at ¶ 11). Defendants admit to no claims by virtue of their agreement to settle this matter. (*Id.*) Because Court approval of a PAGA settlement is required by this Court, the settlement is presented to this Court for review and approval. (*Id.* at ¶ 12.)

V. SETTLEMENT NEGOTIATIONS

Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendants. (Leviant Decl., ¶ 13.) Based on their investigation and evaluation of this case, Plaintiff’s Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendants, potential adverse findings regarding liability, and numerous potential appellate issues. (*Id.*)

On October 7, 2024, the Parties participated in an all-day mediation presided over by a professional and neutral mediator, Tripper Ortman, of Ortman Mediation. (Leviant Decl., ¶ 14.) The Parties engaged in extensive negotiations and exchange of data, documents and information prior to and during mediation. (*Id.*) The Parties were able to reach a settlement, which led to this Agreement to settle the Action. (*Id.*)

The Parties have memorialized the terms of the settlement in a long-form agreement (the “Agreement”). (Leviant Decl., ¶ 15.)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to law enforcement. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

“Because an aggrieved employee’s action under the Labor Code Private Attorneys General

1 *Act of 2004 functions as a substitute for an action brought by the government itself*, a judgment in
2 that action binds all those, including nonparty aggrieved employees, who would be bound by a
3 judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited
4 exceptions, “[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce
5 Development Agency, leaving the remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v.*
6 *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS*
7 *Transportation Los Angeles v. Iskanian*, — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20,
8 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

9 “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
10 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal.
11 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell
12 previously within the exclusive domain of State enforcement, the California Supreme Court explained
13 that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382 (“A PAGA
14 representative action is therefore a type of *qui tam* action.”).

15 **VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

16 Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive
17 guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court
18 decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be
19 reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent
20 purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D.
21 Cal. 2016) (“By providing fair compensation to the class members as employees and substantial
22 monetary relief, a settlement not only vindicates the rights of class members as employees, but may have
23 a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).

24 *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to
25 measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with
26 federal courts, concluded that the class action factors are appropriately considered, along with a
27 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
28 violations, deter future ones, and to maximize enforcement of state labor laws.”

1 The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a
2 class action settlement are well understood. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held
3 that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
4 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
6 small.”⁴ *Id.* at 1801. The court should also consider the expense, complexity and likely duration of
7 further litigation. *Dunk*, 48 Cal. App. 4th at 1801. “It is, of course, the strong public policy of this state to
8 encourage the voluntary settlement of litigation.” *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).
9 Finally, these factors are not exclusive and the court is free to balance and weigh, based on
10 circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

11 While class settlement factors provide some guidance as to how a Court may approach the
12 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
13 action settlements that must be recognized. Unlike a class action settlement, the scope of release
14 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
15 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
16 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the nonparty employees, because they were not given
17 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
18 remedies other than civil penalties.” *See id.*, at 987. Thus, the scope of a release in a PAGA settlement is
19 confined to PAGA penalties, and not related individual claims available under the Labor Code.⁵

20 Applying the above standards to this settlement, the settlement meets all criteria for approval.

21 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

22 Applying the class settlement fairness factors discussed above – limited to those compatible with
23 the unique features of PAGA claims – the proposed settlement embodies all of the key features of a
24

25 ⁴ PAGA provides no notice or claim procedures as exist in class action cases.

26 ⁵ This is contrasted with the much broader release permitted in a class action context, which may be
27 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust*
28 *Litigation*, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of
PAGA Settlement Members who may possess individual wage and hour claims.

1 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

2 Plaintiff and Plaintiff's counsel have diligently investigated the claims in this matter. (Leviant
3 Decl., ¶ 18.) Plaintiff and Counsel concluded, after taking into account the disputed factual and legal
4 issues involved in this Action, the substantial risks attending further prosecution, including risks related
5 to the outcome of possible summary judgment efforts, and the substantial benefits to be received
6 pursuant to the compromise and settlement of the Action as set forth in the Agreement, that settlement on
7 the terms agreed to are in the best interest of Plaintiff and the PAGA Settlement Members and are fair
8 and reasonable. (*Id.*) Plaintiff's Counsel brought to bear a great deal of experience with wage and hour
9 actions in negotiating the settlement of this case. (*Id.*)

10 Resolution at this time will forestall the need for additional expensive and time-consuming
11 litigation that could very well result in an outcome less satisfactory than that proposed under this
12 settlement. (Leviant Decl., ¶ 19.) But, before any other consideration, Plaintiff and Plaintiff's counsel
13 have agreed to this settlement because it is objectively reasonable. (*Id.*) The potential for resolution
14 benefits the PAGA Settlement Members and the State of California, since they do not have to wait
15 additional years for recovery. (*Id.*) The efficiency of this litigation benefits the Court, the parties and
16 their counsel. (*Id.*) A settled resolution now is the most realistic method for addressing the claims raised
17 in this matter.

18 Plaintiff's counsel have engaged in the necessary investigation in this case that made it possible
19 to exercise informed judgment in those aspects of the settlement process in which we were involved.
20 (Leviant Decl., ¶ 20.) The Defendants in this matter produced important information, pay and time data
21 for MHC employees. (*Id.*) That information, coupled with other data provided, including Defendants'
22 time and pay policies, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement;
23 Plaintiff had more than enough information upon which to evaluate its reasonableness. (*Id.*)

24 Here, the expense, complexity and likely duration of future litigation was to some extent an
25 unknown. (Leviant Decl., ¶ 21.) However, what is certain is that to adequately establish the
26 foundational violations that would support any penalty award, significant time and expense would be
27 invested. (*Id.*) To adequately establish that PAGA Settlement Members experience the alleged
28 violations, and at what frequency, the PAGA Settlement Members would need to be interviewed in a

1 systematic fashion. (*Id.*) The process would be expensive and time-consuming. (*Id.*) But doing so
2 would have been required, since frequency of violations would need to be established before any
3 penalties could be recovered. (*Id.*) As to claims such as meal period and rest break violations, the
4 decisions of PAGA Settlement Members are a major factor in assessing liability. (*Id.*) Thus, even if
5 records show a facially non-compliant meal period, no penalty could be assessed automatically. (*Id.*) In
6 sum, the evidence collected to date leads Plaintiff to conclude that, to the extent violations occurred, a
7 fact which Defendants vehemently dispute, the violations were **not** systematic and **not** uniform across all
8 of the employees who worked during the PAGA period. (*Id.*) With these considerations in mind, the
9 amount of the Settlement is reasonable. (*Id.*)

10 **A. The PAGA Penalty Amount Provides Genuine and Meaningful Relief to the LWDA**
11 **and PAGA Settlement Members Consistent with the Dual-Purpose of PAGA**

12 The amount remaining after deduction of the Administrative Costs and Attorneys' Fees and
13 Costs (hereinafter referred to as the "PAGA Penalty Amount"), will be allocated to the LWDA and all
14 PAGA Settlement Members, pursuant to PAGA and the terms of the Agreement, as civil penalties, with
15 seventy-five percent allocated to the former and twenty-five percent allocated to the latter. (Levant
16 Decl., ¶ 22.)

17 The PAGA Penalty Amount, which is estimated to be \$165,521.10⁶, provides genuine and
18 meaningful relief to the LWDA and all allegedly aggrieved employees consistent with the dual-purpose
19 of PAGA because it both redresses the alleged Labor Code violations Plaintiff claims occurred and
20 deters Defendants from violating the Labor Code in the future, in light of the long-term, costly process
21 required to litigate, mediate, and ultimately settle the Action. (Levant Decl., at ¶ 23.) For these reasons,
22 the PAGA Penalty Amount constitutes genuine and meaningful relief consistent with the underlying
23 purpose of PAGA. (*Id.*)

24 **B. The PAGA Penalty Amount Is Reasonable Pursuant to Labor Code § 2699(e)**

25 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
26

27 ⁶ The PAGA Penalty Amount equals the Settlement Amount (\$295,000) less the PAGA Counsel requested fee
28 award (\$98,333.33), PAGA Counsel's costs (\$24,145.57), and Administrator's payment (\$7,000.00).

1 Labor Code § 2699(e) states: “For purposes of this part, whenever the [LWDA] has discretion to assess a
2 civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and
3 conditions, to assess a civil penalty...[A] court may award a lesser amount than the maximum civil
4 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
5 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
6 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or
7 circumstances justify reduction, or where such award is unreasonable and/or excessive.

8 The PAGA Penalty Amount is also reasonable in light of the potential verdict value of all claims
9 released. Indeed, the Agreement contains a release of all PAGA-based claims for civil penalties and all
10 PAGA-based claims that arise out of or are related to the PAGA claims set forth in the Operative
11 Complaint and PAGA Notice, including those related to unpaid wages, including minimum wages,
12 overtime compensation, meal period premiums, rest break premiums and unreimbursed business
13 expenses. (Leviant Decl., ¶ 24.) These claims served as the basis of the alleged aggrieved employees’
14 PAGA claims. (*Id.*)

15 For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be about 31,625
16 total for the 965 PAGA Settlement Members. (*Id.* at ¶ 21.) Using the most straightforward formulation
17 of applying the “catch-all” \$100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period,
18 the total penalty exposure is approximately \$3,162,500.00. (*Id.*) This amount is not precise and
19 overstates the best-case penalty recovery significantly, in light of the issues discussed below.

20 In addition, with assistance from Plaintiff’s data consultant, and after a thorough review of
21 evidence casting serious doubt on the viability of many of the theories of penalty recover, Plaintiff’s
22 counsel separately estimated the plausible maximum potential PAGA exposure, on a penalty-by-penalty
23 basis, to be approximately **\$2,561,550.00**, which includes many overly optimistic assumptions about the
24 ability to prove the frequency of violations for all PAGA Settlement Members who allegedly
25 experienced issues. (*Id.*) The settlement is approximately **12%** of that very optimistic exposure
26 calculation, described below:

- 27 • Failure to compensate for unpaid wages based on off-the-clock work: Off-the-clock work is
28 the most heavily disputed allegation in the case. Off-the-clock work was alleged to occur

during on-call time, while waiting to clock in for shifts, and due to pre-shift Covid-19 screening questionnaires. MHC paid employees for response time when they were on call, and only a small percentage of the workforce was assigned to on-call coverage. The legal issue was whether the on-call time was sufficiently restrictive to render all of the on-call time compensable. The on-call theory presents significant risk, factually and legally. Clock-in delays do not appear to have a high likelihood of success. There was a factual dispute as to whether Covid-19 screening was conducted off-the-clock. The workforce at each location was small, and there were multiple ways to clock in and out for each shift. The plausible exposure is estimated to be \$474,300.00 (4,743 total pay periods × \$100 penalty), based on the on-call theory of liability and estimating that 15% of the workforce in a pay period had on-call duty assignments. This is a high-risk theory of recovery.

- Regular Rate Calculation Errors: Data analysis showed a tiny, potential error in the calculation of the regular rate of pay. The error occurred in only 331 pay periods. The exposure is estimated to be \$33,100.00 (331 total pay periods × \$100 penalty).
- Failure to provide meal periods: Assuming that facial violations in time records all result in a penalty, a generous assumption given that employee choice can be a significant factor, the calculated maximum exposure is just \$34,787.50 (695 total pay periods * \$50 penalty). Defendant's meal period compliance, on the fact of its records, was very high.
- Failure to provide rest breaks: It was alleged that rest breaks were generally ignored. This contention was heavily disputed, and, given the high rate of compliance with meal period requirements, it would be unexpected to find an employer disregarding this legal obligation while carefully complying with another. Given the absence of any record to establish missed rest breaks and the need to rely heavily on PAGA Settlement Member testimony, it is estimated that this claim could support, at best, an exposure of \$316,250 (31,625 pay periods × 20% violation rate × \$50.00).
- Unreimbursed business expenses: Plaintiff alleged that all employees were required to use a cell phone without reimbursement. If true, it would still not apply to all employees. Based on an estimated scope of impact of 25% of the workforce, and on a monthly basis, this results

1 in a maximum exposure of \$395,312.50 (15,812 total pay periods × 0.25 × \$100 penalty).

2 Defendants contend that any incurred business expenses were highly individualized and, if
3 business expenses were incurred, employees were reimbursed.

- 4 • Failure to timely pay final wages: It is estimated that the maximum exposure for this claim is
5 \$57,800.00 (578 former employees × \$100 penalty).
- 6 • Failure to furnish accurate itemized wage statements: It is estimated that the maximum
7 exposure for this claim is \$1,250,000.00 (5,000 total pay periods × \$250 penalty). This claim
8 is based, first, on the unpaid wage claims, with an assumed increase of impacted pay periods
9 from 4,743 to account for non-overlapping meal period violation pay periods, which makes it
10 entirely derivative as to either violation. Thus the \$250 penalty may not be recoverable due
11 to the “stacking” of penalties for the same underlying theory of recovery.

12 (See, Leviant Decl., ¶ 21.)

13 The amount of the settlement must then be viewed in light of the potential risks in continuing to
14 litigate, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff
15 prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil
16 penalties, Defendant’s defenses, and the fact that the ultimate purpose of the Action is to obtain genuine
17 and meaningful relief for the LWDA and, secondarily, the allegedly aggrieved employees. (Leviant
18 Decl., ¶ 25.)

19 **1. The Total Amount of the Settlement is \$295,000.00**

20 The settlement provides a monetary benefit that falls well within “the range of an acceptable
21 settlement” under the circumstances, which is the standard on which the instant Settlement must be
22 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
23 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P’ship*, 151
24 F.3d 1234, 1242 (9th Cir. 1998).

25 Under the Agreement, Defendants shall pay a maximum sum of \$295,000.00. Defendants
26 argued that numerous individualized inquiries would be needed to determine whether any PAGA
27 violations existed, including (1) whether employees worked off-the-clock with knowledge of a
28 supervisor or Defendants, (2) whether each individual took a particular meal period or rest break on a

1 particular occasion, (3) whether the meal period was waived or voluntarily not taken, (4) whether any on-
2 call time was legally compensable, and (5) where the individual skipped the meal or rest period, or *why* it
3 was skipped for each allegedly aggrieved employee.

4 **2. Payment of At Least \$165,521.10 in Penalties**

5 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
6 **\$165,521.10**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
7 PAGA statute, “unjust, arbitrary, or oppressive.” Labor Code § 2699(e)(2).

8 *a) The LWDA shall receive at least \$124,140.82*

9 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
10 **\$124,140.82** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the “provisions of
11 the settlement relating to health and safety laws shall be submitted to the division at the same time that
12 they are submitted to the court. This requirement shall be construed to authorize and permit the division
13 to comment on the settlement provisions, and the court shall grant the division's commentary appropriate
14 weight.” The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.

15 *b) PAGA Settlement Members shall receive a pro rata share of at least* 16 *\$41,380.27*

17 Approximately 965 PAGA Settlement Members shall receive a pro rata share of at least
18 **\$41,380.27** (25% of the penalty) under the terms of the Agreement and by operation of PAGA. The
19 Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to
20 PAGA Settlement Members; the penalties recovered under PAGA are *not* surrogate individual damages.
21 Instead, the amount available to PAGA Settlement Members is in addition to any damages that could be
22 recovered via individual claims.

23 **C. The Presence of a Government Participant**

24 As set forth above, 75% of the PAGA Penalty Amount will be paid to the LWDA. In connection
25 therewith, Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an
26 independent check on settlements. The LWDA was notified of the Settlement. (Leviant Decl., ¶ 45.)

27 **D. PAGA Counsel Are Experienced and Negotiated Aggressively**

28 The court may also consider that negotiations between the Parties were conducted at arm's

length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 14, 18.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the PAGA Settlement Members. PAGA Counsel are experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the “percentage method” rather than the lodestar approach when awarding attorneys’ fees in a common fund type settlements. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around *one-third* of the recovery.”) (emphasis added). The proposed attorney fee award here is 33 1/3% of the Gross Settlement Amount, an amount reasonably comparable to “average” fees awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is *not* a class action. It is more akin to contingent representation with an additional requirement of Court review due to the *qui tam* nature of PAGA claims. The California Supreme Court has removed any lingering doubt about the use of the percentage of the fund method to award attorney’s fees in California Courts, endorsing and encouraging that method.

1 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁷

2 Thus, courts regard circumstances in which class counsel's work is wholly contingent, such as in
3 class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated
4 fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This
5 matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient.
6 The actual lodestar incurred by Plaintiff's counsel to date is no less than \$124,207.50, not including
7 unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-38.) Counsel for Plaintiff invested time
8 evaluating data before the negotiations in this matter and in preparing for negotiations with Defendant's
9 counsel. (*Id.* at ¶ 20.) Those efforts led to this reasonable settlement. (*Id.*) Plaintiff's Counsel requests a
10 fee of **\$98,333.33**, as specified in the Agreement, which represents a "negative" multiplier of 0.79.
11 (Leviant Decl., ¶ 39.)

12 The Agreement also provides for the award of actual costs, capped at \$26,000.00 based on
13 Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this lawsuit on a
14 contingency basis. (Leviant Decl., ¶ 40.) Actual costs are below the capped amount, thus consistent with
15 the Settlement, a cost award of **\$24,145.57** is requested. (Leviant Decl., ¶ 40.)

16 **2. Administration Fees Are Very Reasonable**

17 Administration will be completed by Phoenix Class Action Administration for **\$7,000.00**, a very
18 reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶ 16.)

19 **IX. CONCLUSION**

20 For the above reasons in fact and law, Plaintiff requests this court enter an order approving the
21 settlement memorialized in the Agreement.

22 Respectfully submitted,

23 Dated: February 21, 2025

MOON LAW GROUP, PC

24 By: 
25 H. Scott Leviant

26
27 ⁷ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases." *Laffitte*, at 501.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Catherine A. Conway
cconway@gibsondunn.com
Megan M. Lawson
mlawson@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
Facsimile: 213.229.7520

Counsel for Defendant EQUITY LIFESTYLE PROPERTIES, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

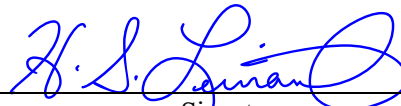
☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **February 21, 2025** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature